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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,037	05/23/2001	Peter A. Gottlieb	18133-099	1832

7590 03/13/2002
MINTZ, LEVIN
One Financial Center
Boston, MA 02111

EXAMINER

FLEMING, FRITZ M

ART UNIT	PAPER NUMBER
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2836

DATE MAILED: 03/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,037

Applicant(s)

GOTTLIEB ET AL.

Examiner

Fritz M. Fleming

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.


- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Fritz Fleming
Patent Examiner

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 5) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 6) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 24-49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-47 of U.S. Patent No.

6,274,950 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because the pending claims seem to claim the same material in a broader sense as best as the claims can be understood.

Claim Rejections - 35 USC § 103

3. Claims 24-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stich et al. '533 (A) in view of Reich et al. (B) and Simonsen (C) and Masson (D).

A teaches the overall concept of a single battery 47 that is monitored via 61, this information being passed on to the UPS controller 66 which is connected to AC in via the line monitor 53/62 and to the contactor 34 and static switch 35 so as to control the inverter 46 when the AC drops out. Note that the battery is monitored and numerous alarms are generated.

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B teaches the desirability to perform in depth analysis of the "at least one battery" in a UPS. The parameters are stored, measured and communicated. Note the use of RS232C. Amongst the parameters measured are battery string voltage, battery shunt current, and temperature. "Events" are flagged and communicated. See for example Table 1 and Table 2 and the use of an LCD display. Note the use of RJ-11 phone connection.

C teaches that standby batteries often come in parallel strings and it is desirable to monitor these batteries for float voltage, time of battery discharges, total accumulated battery discharge power, temperature and recharge current and voltage. Note that Figures 8-10 show outputs. Figure 11 shows a single processor based monitor for parallel strings, but Figure 12 shows plural monitors (i.e. one for each parallel branch) with the teaching that this is more accurate (see column 9). Finally note that column 5 contemplates the use of a phone modem to transmit the instrument data.

Finally, D teaches parallel-connected battery strings that are monitored for voltage, current and temperature so as to ensure proper backup operations.

Thus it would have been obvious to one having ordinary skill in the art at the time that the invention was made to modify A per the teachings of B-D for the purpose of more accurate battery string monitoring so as to ensure proper backup operations when the input AC fails.

Conclusion

Response to Arguments

4. Applicant's arguments filed 1-14-2002 have been fully considered but they are not persuasive. Applicants only make a brief argument for each of the independent claims. Regarding claim 24, Stich et al. clearly show a battery monitor 61 feeding the UPS processor 66. Each of the other references teaches a processor based battery monitor and the rejection renders obvious what is claimed. Regarding claim 41, the same applies. Regarding claim 44, it is clear that Stich et al. show a battery monitor 61 feeding the UPS processor 66, at least in an "adapted to be coupled" manner. Masson shows the processor 32 feeding output interface 38, which obviously has ports. Simonsen also shows output from the CPU 56 via buffers 64, obviously ports for devices 62,66,68,70. Reich et al. set forth microprocessor 10 with output ports P1 and P3 and various pins forming other ports. Mere generalized statements alleging what the references lack are not persuasive. Clearly the combined teachings set forth a processor based battery monitor supplying data to the UPS processor with the determination to be made whether to power from the AC or the batteries.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

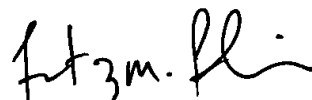
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M. Fleming whose telephone number is 703.308.1483. The examiner can normally be reached on M-F 0630-1500.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1782.


Fritz M. Fleming
Primary Patent Examiner
Art Unit 2836

ff
March 11, 2002